

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

ERICK G. VILLATORO,)	
)	
Plaintiff,)	CIVIL ACTION FILE
)	NO.
)	
v.)	
)	On removal from the State Court of
SUNRISE PRODUCE, INC.,)	DeKalb County, Civil Action
JOHN DOE, ABC CORP.,)	File No. 22A03174
XYZ CORP., AND AUTO-)	
OWNERS INSURANCE)	JURY TRIAL DEMANDED
COMPANY,)	
)	
Defendants.)	

NOTICE OF REMOVAL

COMES NOW, Auto-Owners Insurance Company (“Defendant”), Defendant in the above styled action, and within the time prescribed by law files this Notice of Removal and respectfully shows the Court the following facts:

1.

Plaintiff commenced this action by filing his Complaint on August 22, 2022, in the State Court of DeKalb County, which is a county within the Atlanta Division of this Court. The suit is styled as above and numbered civil action file number 22A03174 in that Court. Defendant Auto-Owners was served with a copy of the suit on or about August 26, 2022. The Notice of Removal is filed within the 30 days of

Defendant's receipt of the suit and is thus timely.

2.

Plaintiff in the aforesaid case is a resident and citizen of the State of Georgia. (See Plaintiffs' Complaint, ¶ 1).

3.

Defendant Auto-Owners is a corporation organized under the laws of the State of Michigan with its principal place of business in the State of Michigan. Defendant Auto-Owners is not a citizen of the State of Georgia, and was not a citizen of the State of Georgia on the date of filing of the aforesaid civil action and has not been thereafter. (See Plaintiff's Complaint, ¶ 3).

4.

Defendant Sunrise Produce, Inc. is a foreign corporation organized under the laws of the State of Indiana, with its principal place of business in the State of Indiana. Defendant Sunrise Produce, Inc. is not a citizen of the State of Georgia and was not a citizen of the State of Georgia on the date of filing of the aforesaid civil action and has not been thereafter. (See Plaintiff's Complaint, ¶ 2).

5.

The Complaint also lists defendants John Doe, ABC Corp, and XYZ Corp.

6.

Defendants John Doe, ABC Corp, and XYZ Corp are fictitious defendants whose citizenships must be disregarded for removal purposes. See 28 U.S.C. § 1441(b)(1); Weiland v. Palm Beach Cty. Sheriff's Office, 792 F.3d 1313, 1318 n.4 (11th Cir. 2015).

7.

Complete diversity exists between Plaintiff and Defendant in accordance with 28 U.S.C. §1332 (a)(1).

8.

The amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

9.

Plaintiff seeks recovery for personal injuries, past and future medical expenses, past and future lost wages, and pain and suffering, specifically Plaintiff has alleged medical expenses in excess of \$82,880.87 (*See* Complaint, ¶ 29) allegedly sustained in the subject motor vehicle accident on Interstate 285 in DeKalb County, Georgia. Plaintiff also seeks recovery of punitive damages in connection with the subject incident. (*See* Plaintiff's Complaint, ¶ 32). Although Defendant denies any wrongdoing, the allegations of injuries and damages sought in the

Complaint seek damages in excess of \$75,000. Thus, given the allegations of Plaintiff's Complaint, the amount in dispute in this matter will exceed the jurisdictional requirement of \$75,000.

10.

This case is a civil action that may be removed to this Court pursuant to 28 U.S.C. § 1441. This court has original jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) and (b) because there is complete diversity of citizenship between Plaintiff and Defendant and, as shown above, the amount in controversy exceeds \$75,000. Further, as required by 28 U.S.C. § 1441(b), no Defendant is a citizen of the State of Georgia.

11.

Pursuant to 28 U.S.C. § 1446(a), Defendant has attached hereto copies of all process, pleadings, and orders served upon them in this case, such copies being marked "Exhibit A".

12.

Defendant submits this Notice of Removal without waiving any defense to the claims asserted by Plaintiff or conceding that Plaintiff has pled claims upon which relief can be granted. Defendant specifically reserves the right to assert, if applicable, any and all defenses enumerated under Rule 12 of the Federal Rules of Civil

Procedure or any other affirmative defenses, including those enumerated under Rule 8(c) of the Federal Rules of Civil Procedure, upon the filing of its responsive pleadings within the time allotted under the Federal Rules of Civil Procedure.

13.

Defendant has given written notice of the filing of this Notice of Removal to Plaintiffs by notifying their attorney of record, Shanti Nagrani and David Byrd, Bader Scott Injury Lawyers, 3384 Peachtree Road, N.E., Suite 500, Atlanta, Georgia 30326. Defendant has also filed a written notice with the Clerk of the State Court of DeKalb County, a copy of said notice being attached hereto and made in part hereof.

WHEREFORE, Defendant prays that the case be removed to the United States District Court for the Northern District of Georgia, Atlanta Division.

This 23rd day of September, 2022.

SWIFT, CURRIE, McGHEE & HIERS, LLP

/s/ Gillian S. Crowl

Mike O. Crawford
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Gillian S. Crowl
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LOCAL RULE 5.1(C) CERTIFICATION

By signature below, counsel certifies that the foregoing pleading was prepared in Times New Roman, 14-point font in compliance with Local Rule 5.1(C).

Respectfully submitted, this 23rd day of September, 2022.

Respectfully submitted,

SWIFT, CURRIE, McGHEE & HIERS

/s/Gillian S. Crawl

Mike O. Crawford

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CERTIFICATE OF SERVICE

This is to certify that I have this date served upon counsel for the opposing parties in the foregoing matter a true and accurate copy of **NOTICE OF REMOVAL** with the Clerk of Court using the CM/ECF System. The clerk will serve opposing counsel as follows:

Shanti Nagrani
David Byrd
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Atlanta, Georgia 30326
shantinagrani@baderscott.com
Attorneys for Plaintiff

This 23rd day of September, 2022.

SWIFT, CURRIE, McGHEE & HIERS, LLP

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